MOHAMED HASSAN v. SHERWOOD BEARS (S) PTE. LTD.

[O.C.J. (Jones J.) August 9, 1982]

[Bandar Seri Begawan – Suit No. 153 of 1982]

Practice & Procedure – Mareva injunction – Court in Brunei has no power to grant Mareva injunction – No law in Brunei corresponding to s. 545 of the Supreme Court of Judicature (Consolidation) Act 1925 (U.K.)

Jurisdiction – Mareva injunction – Court in Brunei has no power to grant.

This was an application for a *Mareva* injunction to prohibit the defendants from removing their assets in Brunei from the jurisdiction of the court pending the trial of the action.

Held, dismissing the application: before a *Mareva* injunction can be made in Brunei, there must be a corresponding provision to section 45 of the Supreme Court of Judicature (Consolidation) Act 1925 (U.K.). Unfortunately, there appears to be no equivalent in the law of Brunei.

Per curiam: "... it is highly desirable that legislation be introduced in Brunei to enable creditors to take steps to prevent debtors from defeating their claims by removing their assets beyond the jurisdiction before judgment."

Cases referred to:

(1) *Nippon Yusen Kaisha* v. *Karageorgis* [1975] 1 W.L.R. 1093; [1975] 3 All E.R. 282.
(2) *Vivien Teo Lian Eng* v. *Ang Leng Tat* [1978] 1 M.L.J. 102.
(3) *Zainal Abidin bin Haji Abdul Rahman* v. *Century Hotel Sdn. Bhd.* [1982] 1 M.L.J. 260.

CIVIL SUIT.

David Clidero for the plaintiff.
Mrs. Irene Appaduray for the defendants.

Cur. Adv. Vult.

Jones J.: This is an application for a *Mareva* injunction to prohibit the defendants from removing their assets in Brunei from the jurisdiction of the court pending the trial of the action. I understand that it is the first application of its kind to be made in Brunei.

The defendant company is incorporated in Singapore, but has a registered office in Brunei.

The Writ and Statement of Claim have been served, and a conditional appearance has been entered by the defendants. The claim is for damages for breach of contract in a sum that is in excess of $1,700,000/=.

The summons was issued *ex-parte* but having regard to the fact that an appearance had been entered, I directed that the summons be heard *interpartes.*

It was submitted by Mrs. Appaduray who appeared for the defendants that the Court in Brunei has no jurisdiction to grant a *Mareva* injunction.

The law with regard to the *Mareva* injunction in England has been developed since the case of *Nippon Yusen Kaisha* v. *Karageorgis*(1) and now has statutory force by virtue of section 37(2) of the Supreme Court Act 1981. The court originally invoked jurisdiction under Section 45 of the Supreme Court of Judicature (Consolidation) Act 1925 which provides:-

"The High Court may grant a mandamus or an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the court to be just or convenient so to do ..."

Mr. Clidero for the Plaintiff concedes that the Supreme Court of Judicature (Consolidation) Act 1925 does not apply in Brunei. However, he contends that the English Common Law and equitable principles apply by virtue of Section 2 of the Application of Laws Enactment (Cap. 2) which reads:-

"Subject to the provisions of this Enactment and save in so far as other provision has been or may hereafter be made by any written law in force in the State, the common law of England and the doctrines of equity, together with statutes of general application, as administered or in force in England at the commencement of this Enactment, shall be in force in the State:

Provided that the said common law, doctrines of equity and statutes of general application shall be in force in the State so far only as the circumstances of the State and of its inhabitants permit and subject to such qualifications as local circumstances and native customs render necessary."

He cited in support of his argument the case of *Vivien Teo Lian Eng* v. *Ang Leng Tat*(2) where McMullin J. at page 104 said:

"Mr. Clidero for the plaintiff primarily relies on the provisions of Order 15 rule 6A(4) of the current English Rules of the Supreme Court and upon rule 2 of the preliminary rules of the 1970 Civil Procedure Rules of Brunei. I think he is right and I do not think it matters that the English Rule was introduced only in 1973 or that it was made consequent upon special enabling English Legislation: the Proceedings against Estate Act 1970 (section 2 thereof)."

I do not consider that this citation assists the Plaintiff because rule 2 is concerned with practice and procedure and not with jurisdiction.

The Singapore High Court has granted *Mareva* injunctions although it appears that the court's jurisdiction has not been tested, but there is a corresponding provision to the English Section 45 in Section 4(8) of the Civil Law Act (Singapore). Mrs. Appaduray drew my attention to *Zainal Abidin bin Haji Abdul Rahman* v. *Century Hotel Sdn. Bhd.*[3] where it was held that:

"the High Court of Malaysia has jurisdiction to grant to Mareva injunction in appropriate circumstances, as the provisions of paragraph 6 of the Schedule to the Courts of Judicature Act, 1964, are the equivalent of the provisions of section 45 of the English Court of Judicature (Consolidation) Act, 1925."

Mareva injunctions have also been granted in the Supreme Courts of British Columbia, New Zealand, Victoria, Queensland, Western Australia, but have been refused in the Supreme Courts of South Australia and New South Wales. The reason for refusal in South Australia and New South Wales was on the ground that jurisdiction is a matter of policy of legislative not judicial determination.

The principles governing the making of interlocutory injunctions in Brunei are set out in Order 47 of the Brunei High Court (Civil Procedure) Rules 1970 which are of limited effect.

Upon consideration of the authorities, I have come to the conclusion that before a *Mareva* injunction can be made in Brunei, there must be a corresponding provision to Section 45 of the Supreme Court of Judicature (Consolidation) Act 1925. Unfortunately, there appears to be no equivalent in the law of Brunei.

However, in my opinion, it is highly desirable that legislation be introduced in Brunei to enable creditors to take steps to prevent debtors from defeating their claims by removing their assets beyond the jurisdiction before judgment. I would therefore urge the Hon. Attorney-General to give urgent attention to amending the law so that the court be given power to grant a *Mareva* injunction.

The application is therefore refused with cost.

Application dismissed.

Solicitors: *David Clidero & Co.; Shelley Yap & Irene Appaduray.*

KOH HOE PENG v. CENTRAL DEVELOPMENT LTD.

[A.C.J. (Roberts C.J. (Brunei)) January 24, 1983]

[Bandar Seri Begawan – Civil Appeal No. 2 of 1982]

Practice and Procedure – Jurisdiction – Leave to appeal to the Privy Council to be granted by "the Court of Appeal of Brunei" – Chief Justice not Judge of Court of Appeal and therefore not empowered to grant leave – Sarawak, North Borneo and Brunei (Appeal to Privy Council) Order in Council 1951, ss. 3(a), 5 & 6 – Supreme Court Enactment 1963, ss 6 & 9 – Rules of the Supreme Court, O. 57, rr. 2 & 18.

By a Notice of Motion dated December 20, 1982, the appellant sought an order that the order of the Court of Appeal be stayed pending the hearing of any application for leave to appeal to the Privy Council, and by a further Notice of Motion dated January 22, 1983, the appellant sought leave to appeal to the Privy Council.

Held: the Chief Justice is not a Judge of the Court of Appeal and so cannot exercise the power conferred by section 6 of the Sarawak, North Borneo and Brunei (Appeal to Privy Council) Order in Council 1951 on a single Judge of the Court of Appeal. The present court had therefore no jurisdiction to order a stay of execution and application for leave to appeal would be refused.

MOTION.

Kugarajah for the appellant.

Miss D.F. Abang Zen for the respondent.

Cur. Adv. Vult.

Roberts C.J. (Brunei): The Court of Appeal for Brunei dismissed the appeal of the appellant on November 25, 1982. The court also ordered that the appellant should execute a memorandum of transfer of certain property within one month and that, if he failed to do so, the memorandum should be executed by the Chief Registrar.

The appellant failed to carry out the order, and the Chief Registrar has not executed the memorandum of transfer, no doubt awaiting the outcome of these applications.

By a Notice of Motion dated December 20, 1982, the appellant sought an order that the order of the Court of Appeal be stayed pending the hearing of any application for leave to appeal to the Privy Council, and by a further Notice of Motion dated January 22, 1983, the appellant sought leave to appeal to the Privy Council.

By consent of the parties, I heard both applications together.